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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,653	05/12/2005	Bernhard Heuft	P2479US	7107
8968	7590	03/08/2006	EXAMINER	
GARDNER CARTON & DOUGLAS LLP ATTN: PATENT DOCKET DEPT. 191 N. WACKER DRIVE, SUITE 3700 CHICAGO, IL 60606			THOMAS, COURTNEY D	
			ART UNIT	PAPER NUMBER
			2882	

DATE MAILED: 03/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

8/1

Office Action Summary	Application No.		Applicant(s)	
	10/534,653		HEUFT ET AL.	
	Examiner		Art Unit	
	Courtney Thomas		2882	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 8-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05/12/05 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>05/12/05; 08/30/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

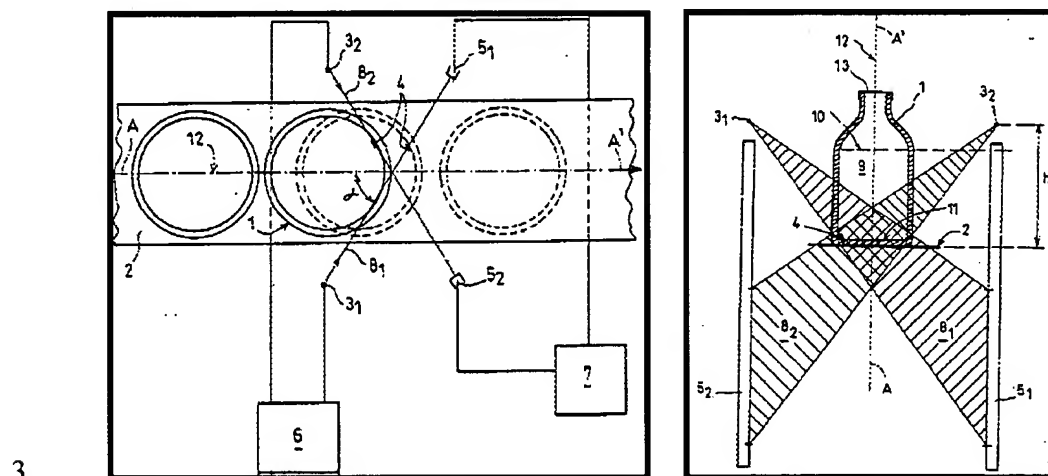
Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Frixon (WO 93/06469).



Figs. 1 & 2 – Device for examining filled containers for foreign bodies – WO 93/06469 to Frixon

4. As per claims 1 and 9-11, Frixon discloses a device (and corresponding method) comprising a transport apparatus (2) for transporting containers (1) individually in succession in a row (see Fig. 1, shown above); at least one X-ray source (3₁, 3₂) for emitting an X-ray (8₁, 8₂) in a predetermined direction, wherein the predetermined direction is inclined by between approximately 10 and 60 degrees to the plane of transport (2); and at least one apparatus for recording (5₁, 5₂, 7) the X-rays (8₁, 8₂) after they have passed through the containers (1).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-5, 8 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frixon (WO 93/06469).

7. **As per claims 2 and 13**, Frixon discloses a device (and corresponding method) as recited in claim 1, but does not explicitly disclose an apparatus wherein a first source is placed above the plane of transport while the second source is placed below the plane of transport and its X-rays are directed upward towards the plane of transport.

8. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Frixon such that it was configured to have a first source placed above the plane of transport while the second source is placed below the plane of transport and its X-rays are directed upward towards the plane of transport. One would have been motivated to make such a modification for the purpose of obtaining views from opposing positions such that the presence of a foreign bodies are identified as a result of source position, as suggested by Frixon (see p.9, lines 33-37; p. 10, lines 1-20).

9. **As per claims 3-4 and 14**, Frixon as modified above, discloses a device (and corresponding method) wherein the at least one apparatus for recording X-rays (5₁, 5₂, 7) is a member of a plurality of apparatuses for recording the X-rays; one of the plurality of apparatuses

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is allocated to each source and the X-rays recorded by the recording apparatuses are compared with one another in an evaluation apparatus (7) - (see p.9, lines 33-37; p. 10, lines 1-20).

10. **As per claim 8 and 12**, Frixon, as modified above, discloses a device (and corresponding method) wherein the at least one X-ray source is positioned such that a ray course is approximately tangential to a maximum slope of a bulge of a bottom of the container (see Figs. 1 & 2 above).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Courtney Thomas whose telephone number is (571) 272-2496. The examiner can normally be reached on M - F (9 am - 5 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Glick can be reached on (571) 272 2490. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Courtney Thomas
Examiner
Art Unit 2882